

REMARKS

Applicants respectfully traverse the rejection in the outstanding Office Action, and request that it be withdrawn in view of these Remarks. Minor amendments have been made in claims 1, 3, 5 and 7 to better define the claimed invention.

Claim Rejections – 35 USC §102

Claims 1-3 are rejected under 35 USC 102(b) as being anticipated by Baldszun (U. S. 4,560,269). The Examiner states that Baldszun's device "is comprised of a pair of opposing walls (5,6 and 7,8) and thus anticipates Applicant's device which claims "mutually opposing front and back walls connected by a pair of mutually opposing side walls." This comparison is inaccurate because an examination of Figs. 3 and 7 within Baldszun reveals that walls 5, 6, 7, and 8 are in fact elongate walls, parallel one to another. As defined at Col. 5, lines 43-46, "the elongate side wall portions 5, 6 of the upper portion of the cell to the side wall portion 7, 8 defining the measuring region." Since a wall portion cannot be both a side wall and an end wall, this anticipation rejection is unfounded. Applicant respectfully requests that the anticipation rejection over Baldszun be withdrawn.

Claim 1 is rejected under 35 USC 102(b) as being anticipated by Demers et al (U. S. 5,840,256). Demers' generally rectangular reaction cell comprises a pair of mutually opposed walls, a closed bottom and an open top, with a curved intersection at the walls. In response, Applicant has amended claim 1 to include optical windows in the opposing front and back walls. Demers' cell has no optical windows and so the anticipation rejection over Demers is overcome. Applicant respectfully requests that the anticipation rejection over Demers be withdrawn.

Claim Rejections – 35 USC §103

This application names joint inventors, and the Examiner has accurately presumed that the subject matter of all claims was commonly owned at the time the inventions were made. An assignment of this application has been so recorded at Reel/Frame 014694/0973.

Claim 5 is rejected under 35 USC 103(a) as being unpatentable over Baldszun (U. S. 4,560,269) in view of Tanner et al. (U. S. 6,767,607). As explained earlier with respect to Applicant's "mutually opposing front and back walls connected by a pair of mutually opposing side walls", the Examiner incorrectly states that Baldszun teaches every element of claim 1. Nevertheless, with respect to claim 5, Baldszun is also lacking in having optical windows having an optical thickness equal to about one wave, thus being "flat" or having parallel surfaces. Tanner teaches that flatness is important when viewing the contents of a well. The Examiner believes it would have been obvious "to make the optical surface of Baldszun as flat as the bottom surface of Tanner to provide a smooth surface that will not interfere with the examination." Applicant respectfully traverses such a conclusion for the reason that, as explained below, Baldszun teaches against having flat optical windows.

Baldszun explains at Col. 6, lines 4-10, that one of the side wall portions 22 or 23 has a special design for measurements using transmitted light. That special design is further illustrated in Figs. 8 and 9 and as explained in Col. 6, lines 28-33:

"The side wall portion 22 has an inside surface 28 and an outside surface 29, which is not parallel to but flatter than the surface 28 so that an effect like that of a positive lens is achieved owing to that design of the side wall portion 22." (underlining added for emphasis)

As further explained by Baldszun at Col. 6, lines 35-48:

"In accordance with FIG. 9, that positive lens effect can be improved in that the outside surface has different outwardly convex curvatures in a plurality of steps arranged one over the other. The step 30 is still disposed within the contour of the cell. Another step 31 has a planar outside surface and together with the inside surface 28 constitutes a planoconvex positive lens. Additional steps 32, 33 may be provided, which are curved outwardly to larger extents and form biconvex regions in the side wall portion. The outside surfaces of the outwardly convex steps shown in FIG. 9 are suitably substantially cylindrical surfaces which are centered on a vertical axis, i.e., which are curved about a line that is at right angles to the plane of the drawing." (underlining added for emphasis)

In making the present rejection, the Examiner has suggested that one should replace Baldszun's convex lens with Tanner's flat bottom surface to improve an optical examination. If one were to make this suggested substitution however, as explained by Baldszun, at Col. 6, lines 1-3, the desired effect of having the side wall 7, which comprises side wall portion 22, "approach a double tapered beam of measuring radiation as closely as possible", would be destroyed. Thus, Baldszun teaches against having flat optical windows as taught in claim 5 and so it cannot be said that one skilled in this art would find Applicant's invention obvious in view of Tanner. For this reason, Applicant respectfully requests that the obviousness rejection of claim 5 over Baldszun (U. S. 4,560,269) in view of Tanner et al. (U. S. 6,767,607) be withdrawn

Claim 6 is rejected under 35 USC 103(a) as being unpatentable over Baldszun (U. S. 4,560,269) in view of Oldenburg et al. (U. S. 6,027,695). As explained earlier with respect to Applicant's "mutually opposing front and back walls connected by a pair of mutually opposing side walls", the Examiner incorrectly states that Baldszun teaches every element of claim 1. Nevertheless, with respect to claim 6, Baldszun is also deficient in lacking wall portions that form a downwardly sloped inward chamber. To correct this deficiency, the Examiner turns to Oldenburg who discloses wells that have side walls that slope inward and then states that it would have been obvious to combine Oldenburg's sloped aside walls with Baldszun's cuvette to replicate Applicant's invention. As explained

above with respect to claim 5, however, Baldszun has a desired effect of having the side wall 7, which comprises side wall portion 22, "approach a double tapered beam of measuring radiation as closely as possible". Thus, if one were to employ inwardly sloped side walls in Baldszun's cuvette, as suggested by the Examiner, it would not be possible to have the opposing side walls 7 and 8, comprising side wall portions 22 and 23, respectively, "approach a double tapered beam". Since Baldszun's cuvette would be rendered inoperative if Oldenburg's sloped inner walls were substituted for Baldszun's parallel side walls, it cannot be said that one skilled in this art would find Applicant's invention obvious in view of Oldenburg. For this reason, Applicant respectfully requests that the obviousness rejection of claim 5 over Baldszun (U. S. 4,560,269) in view of Oldenburg et al. (U. S. 6,027,695) be withdrawn.

Claim 7 is rejected under 35 USC 103(a) as being unpatentable over Baldszun (U. S. 4,560,269) in view of Farina et al. (U. S. 6,752,967). As explained earlier with respect to Applicant's "mutually opposing front and back walls connected by a pair of mutually opposing side walls", the Examiner incorrectly states that Baldszun teaches every element of claim 1. Nevertheless, with respect to claim 7, Baldszun is also deficient in lacking a bump on a ledge extending from the side walls. To correct this deficiency, the Examiner turns to Farina who discloses transfer hubs extending above and below the upper and lower surface of a base plate in a cuvette array. The Examiner considers that it would have been obvious to combine Farina's transfer bumps with Baldszun's cuvette to replicate Applicant's invention. This rejection is respectfully traversed for the following reasons.

As explained in the last sentence of paragraph [0055] in the present application , Applicant's bump is intended to position and latch the claimed cuvette 24 within a cuvette port 24 or in an unload station 59 in a stationary position. In complete contrast, Farina's transfer hubs 134 are designed to facilitate the secure movement of a cuvette array between storage racks or tracks. As explained between Col. 8, line 59 and Col. 9, line 13:

"When employing the aliquot vessel array 102 of the present invention and having these three transfer hubs 134, it is important to adjust the opening between the storage tracks 103 and sampling tracks 107 so that at all times during the transfer process, at least two of the three transfer hubs 134 are fully engaged"

"Advantageously, foot sections 138 and transfer hubs 134 both enable aliquot vessel arrays 102 to be transportable in a single one-dimension linear plane on-board an analyzer so as to eliminate the necessity and expense of two-directional handling means"

"Aliquot vessel arrays 102 are also linearly moveable between storage tracks 103 or sampling tracks 107 by means of transfer hubs 134 as described in FIGS. 9A-9E."

As stated in the MPEP 706.02, in making an obviousness rejection under 35 USC 103(a), MPEP 706.02(j) requires that the Examiner:

"set forth (1) the difference or differences in the claim over the applied reference(s), (2) the proposed modification of the applied reference(s), and (3) an explanation why such modification would be obvious."

In making the present obviousness rejection, the Examiner has failed to explain why it would have been obvious to look to Farina's disclosure of transfer hubs, designed to facilitate the transfer of an array, if one were seeking to provide means to position and latch a cuvette within a port. Transferring and latching are contrary one to another. Lacking such an explanation, Applicant respectfully requests that the obviousness rejection of claim 7 over Baldszun (U. S. 4,560,269) in view of Farina et al. (U. S. 6,767,607) be withdrawn.

Allowable Subject Matter

Claim 4 is objected to as being dependent upon rejected base claim 1 and rejected claim 2. In view of the amendments made to claim 1 and the arguments presented herein, it is believed claim 4 is allowable as originally presented.

Applicant believes that this application contains patentable subject matter and that the foregoing explanation provides a basis for favorable consideration and allowance of all claims; such allowance is respectfully requested. If any matter needs to be resolved before allowance, the Examiner is encouraged to call Applicant's representative at the number provided below.

Respectfully submitted,

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